

# CLEAN WATER NOW! COALITION

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*"The Clean Water Now! Coalition is dedicated to the protection, restoration and preservation of aquatic and riparian ecologies worldwide.."*

To: Staff and Board

June 22, 2009

July 1, 2009 Hearing of SDRWQCB

Agenda Item # 8: NPDES Tentative R9-2009-0002

Re: Conflict Regarding Board NPDES Policies for End-of-Pipe Diversions of low-flow. Approval and funding of same

SDRWQCB:

The CWN!C is extremely disturbed by the failure of the Board to explicitly prohibit or forbid such diversions, plus their endless implementation and funding.

HISTORY:

For almost a decade, the CWN!C has petitioned this Board to halt these diversions as they are antithetical to the very essence of the NPDES process---Tracking, removal or at minimum reduction of pollutants at the source.

The SDRWQCB Executive Officer John Robertus explicitly stated in December of 2001 the State's opposition to such diversions as "band-aids," temporary means to achieve compliance with both AB 411 and the NPDES Permit for South Orange County. CWN!C feels that diversions also circumvent the present goals of TMDLs and Basin Plan Objectives.

Presently, the City of Laguna Beach (CLB) has nearly 20 such diversions online with more planned, all over the repeated opposition by CWN!C. Nearly 100% of the installations have been funded by State grants and other non-CLB revenue streams.

The CLB actually **boasts** of this strategy and has encouraged other Permittees to pursue them as well. The Laguna Beach City Council re-iterated this proposal and support in suggesting amendments to the present MS4 Permit under consideration:

At the June 2, 2009 Laguna Beach City Council Meeting, Mayor Pro Tem Pearson suggested that the San Diego Board be informed that: "We as a City encourage dry weather diversions.....that is end-of-pipe treatment."

Diversions have become the preferred, "**go to strategy**" for chronic violators wishing to circumvent the letter and spirit of the MS4 Permit goals and objectives. Why bother to enforce when you can divert, the gross funds necessary provided by outside agencies, get tacit approval by the SDRWQCB?



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More disturbing is the fact that Mayor Pro-Tem Pearson served on the SDRWQCB for several years recently, so one would assume she should know better, should have a more profound understanding of State MS4 regulations and policies.

This leads other diversion proponents to believe that this strategy is a desirable, acceptable palliative. No actual cure, no improvement, just avoidance of pollutant loading occurs.

On Page 8 of the new NPDES (**Development Planning**) below a #6 should be added: ***Diversions Impair Ocean Outfall Discharges***

b. Controlling urban runoff pollution by using a combination of onsite source control and site design BMPs augmented with treatment control BMPs before the runoff enters the MS4 is important for the following reasons: (1) Many end-of-pipe BMPs (such as diversion to the sanitary sewer) are typically ineffective during significant storm events. Whereas, onsite source control BMPs can be applied during all runoff conditions; (2) End-of-pipe BMPs are often incapable of capturing and treating the wide range of pollutants which can be generated on a sub-watershed scale; (3) End-of-pipe BMPs are more effective when used as polishing BMPs, rather than the sole BMP to be implemented; (4) End-of-pipe BMPs do not protect the quality or beneficial uses of receiving waters between the pollutant source and the BMP; and (5) Offsite end-of-pipe BMPs do not aid in the effort to educate the public regarding sources of pollution and their prevention.

It has become obvious that there has been NO attempt by the Board to halt these diversion activities. Worse, the Board has the power to deny or prohibit the local JPA, South Orange County Wastewater Authority (SOCWA) via its NPDES Ocean Outfall Pipe Discharges (off Dana Point and Aliso Creek Beaches) such diverted surface flows. The Board's silence is tacit approval.

The CLB sends almost .4 mgd, is legally allowed by SOCWA to send 50,000 gd per diversion. This equals potentially 1 mgd, and CWN!C has been able to confirm that the Coastal Treatment Plant (CTP) only processes about 3.5 mgd total of wastewater.

Co-mingled with the Aliso Creek Ocean Outfall Pipe (ACOOOP) is the recently approved .66 mgd diversion of briny waste from the Irvine Ranch Water District of the former MCAS El Toro contaminated aquifer cleanup. This has been projected to require as much as 20 years or more for remediation, and IRWD has admitted at Rehab Hearings that minor, "**acceptable**" traces of TCE and perchlorate are in the wastewater.



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Adding insult to injury will be the .3 mgd of briny waste from the proposed South Coast Water District diversion of Aliso Creek, presently pending due to Cal Water Rights procurement.

The County of Orange, in its strategies, has included an Urban Runoff Treatment Plant with a capacity of approximately 6.5 mgd that will reduce bacteria and TDS in the Aliso Creek Estuary. Briny waste going into the ACOOP is projected to be 1-2 mgd.

CWN!C has NOT been able to ascertain exact numbers of such diversions or exact quantities/volumes of briny waste from Advanced Waste Treatment infrastructure at the Regional Plant (LNRP) in Laguna Niguel, volumes of which are included in the ACOOP discharge.

At the CTP, 1 mgd = Approx. 25% of the total emptied by the facility into the ACOOP. As the NPDES for the ACOOP isn't scheduled for renewal for several years it impinges upon the Board to stop giving tacit approval to these increased volumes NOW. It should be noted that by the time bio-assessment of long-term adverse impacts at the outfalls have taken place, "**dead zones**" may have occurred and be irreversible. Toxic bio-magnification will have already taken its toll.

As the staff well knows, and the Board should, urban runoff contaminants are NOT reduced or removed by these plants UNLESS given AWT (tertiary) cleansing targeted or specifically designed for the pollutants of concern.

**CONCLUSION:**

Board and staff need to address the blatant disparity between policy and implementation. It is ludicrous that MS4 Permittees are allowed to solicit and receive state or federal funds in contradiction to the very goals of the NPDES process. Funding violators to circumvent compliance makes no sense.

Setting lofty goals while allowing Permittees to siphon funds more appropriate for legitimate mitigations, pilot/demos, BMPs, BETs, BCTs and BATs, etc. needs to be brought to the forefront.

Chronic violators who initially agreed that diversions were temporary have now PERMANENTLY included the infrastructure to accomplish their purpose of compliance WITHOUT source reduction, WITHOUT enforcement. While they claim both are too expensive the State and other agencies continue to fund the diversions, the



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Permittees continue to supplement these funds for the O & M costs. Who in their right mind believes that the Permittees will EVER dismantle these diversions? They are now widely integrated, insinuated into the MS4 systems themselves and lead agency strategy thinking---The Permittees will claim Economic Unfeasibility or Technological Impossibility if asked to remove or return them to historical configurations.

Allowing these runoff diversions to be added to the South County outfalls only moves the problem, in fact creates toxic bundles discharged into critically sensitive marine habitats. In the case of both the San Juan and Aliso, these creek mouths are acknowledged corridors for the endangered species and ESU Southern Steelhead (*O. mykiss*). The outfalls are becoming DOMINATED by CTRs and Prop. 65 chemicals.

**It is time for the SDRWQCB to drag SOCWA and its members into the 21<sup>st</sup> Century by mandating a 5 year phase-in of 100% Advanced Waste Treatment (tertiary) at ALL of its facilities in South OC.**

NPDES compliance will never take place if the Board does not take a stronger oppositional position. If it will not, then perhaps we should just suspend the entire process, abandon MS4 Permits as they will never drive CWA or Porter-Cologne compliance. Permittees will continue to find ways or fiscal means to avoid source tracking, reduction and prevention.

Respectfully submitted,

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